In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 675

UNITED STATES OF AMERICA, APPELLANT

v.

JAMES D. KNOX

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

In moving to dismiss the appeal or, in the alternative, to affirm the judgment of the district court, appellee has set forth two distinct arguments: first, that the indictment does not charge an offense under 18 U.S.C. 1001 in that it alleges only a failure to answer certain questions on the Special Tax Return and Registry (Internal Revenue Service Form 11–C); and second that, in failing to answer those questions, appellee has preserved his privilege against self-incrimination as to the issue of his employment of agents.[1]

[1] If appellee wished to assert his privilege against self-incrimination as to any specific questions, he should have so stated on the Form 11–C at the time of filing. *United States* v. *Sullivan*, 274 U.S. 259.

337-171—69

With regard to the former contention, it should be pointed out that Counts Five and Six of the indictment (J.S. App. 13–14) charge not mere failure to answer, but rather "that the number of employees and/or agents * * * [was] misrepresented and understated, in that the number, name [etc.] * * * had been omitted" from the Form 11–C, which petitioner had declared to be "true, correct, and complete" to the best of his knowledge.

In any event, whether there was, in fact, only a failure to answer and whether appellee sought to assert his privilege against self-incrimination are questions which cannot be answered on the record now before the Court. The only issue presented by the dismissal of the indictment against the appellee is the availability of his privilege against self-incrimination as a defense to the charge that he falsified his wagering registration form. Appellee has asserted matters which, if he is able to establish the necessary factual support for them, may constitute defenses to the charges against him, but this appeal is not the appropriate context for their resolution. See *United States* v. *Fruehauf*, 365 U.S. 146.

For these reasons and for those set out in the jurisdictional statement, it is respectfully submitted that probable jurisdiction should be noted or, as previously suggested, that the judgment should be reversed and the case remanded for trial.

ERWIN N. GRISWOLD,
Solicitor General.
WILL WILSON,
Assistant Attorney General.
BEATRICE ROSENBERG,
CHARLES RUFF,
Attorneys.

MARCH 1969.

U.S. GOVERNMENT PRINTING OFFICE: 1969